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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,325	10/11/2000	Edward John Giblin	C6583(C)	4722

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EXAMINER

NICOLAS, FREDERICK C

ART UNIT PAPER NUMBER

3754

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/686,325

Applicant(s)

GIBLIN ET AL.

Examiner

Frederick C. Nicolas

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3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-28 and 30 is/are rejected.
- 7) ☒ Claim(s) 12 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because of legal phraseology "comprising" as recited in line 1, such terminology should be avoided in the abstract. Correction is required. See MPEP § 608.01(b).

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show element (450 and 454) as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

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corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4,6,10-11,13,18-20,22,24-26,29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Arnold et al. 5,855,299.

Arnold et al. disclose a container (10) which comprises a fitment (24) including an outer wall (30) having a top and a bottom, a bottom wall (40) extending inwardly from the bottom of the outer wall, and a pour spout (26) extending upwardly from the bottom wall, a bottle base as seen in figure 1 and it is inherent that the container of Arnold et al. has a bottle base in as much as the applicants' claimed invention, a bottle body 12) extending upwardly from the bottle base to a bottle finish (18), the finish including an inner wall including a first locking surface (48) abutting the outer wall of the fitment, the fitment outer wall and finish inner wall forming a reservoir entrapping fluid product when the container is inverted (col. 4, ll. 18-35), the fitment outer wall including a first product exit aperture (28), the first finish locking surface including a first channel leading from the reservoir toward an exit from the bottle (col. 4, ll. 18-50 and see Figure 4 for location of the first channel), a product drainage aperture (44), a closure (col. 3, ll. 15-16), a

second finish locking surface (50) including a second channel leading toward the exterior of the container.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7-8,14-17,28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold et al. 5,855,299.

Arnold et al. have taught all the features of the claimed invention except that at least one further product exit apertures from the fitment, as well as the claimed subject matter in claims 8,14-17.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to duplicate the aperture of Arnold et al. from the fitment, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. As per MPEP 2144.04

With respect to claim 14, the claimed subject matter "wherein said outer wall includes an upper half and a lower half and at least 40% of the area of said product exit aperture is contained within the upper half" and as well as the claimed subject matter in claims 15-17.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the outer wall to have at least 40% of the are of the

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product exit aperture and as well as the claimed subject matter in claims 15-17 of Arnold et al., Since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. As per MPEP 2144.05

7. Claims 5,21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold et al. 5,855,299.

Arnold et al. have taught all the features of the claimed invention except that the product exit is tapered toward a top end.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have the product exit tapered toward a top end, because applicants have not disclosed that having the product exit tapered toward a top end provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected applicants' invention to perform equally well with the product exit of Arnold et al., because the product exit of Arnold et al. is being used as an outlet. Therefore, it would have been an obvious matter of design choice to modify the product exit of Arnold et al. to obtain the invention specified in claim (5).

8. Claims 9,23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold et al. 5,855,299 in view of Haffner et al. 5,566,862.

Arnold et al. have taught all the features of the claimed invention except that the fitment comprises an annular rim. Haffner et al. teach the use of an annular rim (31) of a fitment (25).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teaching of Haffner et al. onto the outer wall top of Arnold et al., in order to provide additional support for the fitment onto the neck of the container, as taught by Haffner et al. in Figure 1.

9. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold et al. 5,855,299 in view of Greenhalch.

Arnold et al. have taught all the features of the claimed invention except that the bottle body is transparent. Greenhalch teaches a bottle body that is transparent (col. 1, ll. 27-30).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the body of Arnold et al. to be transparent as taught by Greenhalch in (col. 1, ll. 27-30), in order to provide a means of viewing the level of the materials within.

#### ***Allowable Subject Matter***

10. Claims 12,29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

11. Applicant's arguments filed 3/9/2004 have been fully considered but are moot in view of the new ground(s) of rejection.


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-

272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar, can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
March 20, 2006

 3/20/06  
Frederick C. Nicolas  
Primary Examiner  
Art Unit 3754